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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 5 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of Part 90 of the)	
Commission's Rules to Provide)	
for the Use of the 220-222 MHz Band)	PR Docket No. 89-552
by the Private Land Mobile)	RM-8506
Radio Service)	
Implementation of Sections 3(n) and 332)	
of the Communications Act)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services)	
Implementation of Section 309(j) of the)	
Communications Act -- Competitive)	PP Docket No. 93-253
Bidding, 220-222 MHz)	

To: The Commission

**PETITION FOR RECONSIDERATION
OF
METRICOM, INC.**

Metricom, Inc. ("Metricom"), pursuant to Section 1.429 of the Commission's Rules, by its attorneys, hereby submits this Petition for Reconsideration of the Commission's Third Report and Order ("Order") issued in the above-captioned proceeding.^{1/} In this Petition, Metricom urges reconsideration of the Order for the purpose of eliminating the construction benchmarks imposed on existing, 220 MHz, nationwide licensees ("Phase I Licensees") by Section 90.275(a) of the Commission's Rules, and replacing those construction benchmarks with a reasonable build out schedule

^{1/} Third Report and Order; Fifth Notice of Proposed Rulemaking in PR Dkt. No. 89-552, GN Dkt. No. 93-252 & PP Dkt. No. 93-253, FCC 97-57 (rel. March 12, 1997); 62 Fed. Reg. 16004 (Apr. 3, 1997).

similar to that specified for future, 220 MHz, nationwide licensees ("Phase II Licensees"). Only in this manner can the Commission assure that it achieves its goal of establishing a flexible regulatory framework that will eliminate unnecessary regulatory burdens on Phase I Licensees.^{2/}

I. STATEMENT OF INTEREST

1. In February, 1996, Metricom purchased an option to acquire Overall Wireless Communications Corporation ("Overall"), licensee of a five channel, nationwide 220 MHz license (WPCU 518). Metricom anticipates that it will exercise its option when Overall completes forty percent (40%) construction of the 220 MHz system. In accordance with the existing construction benchmarks of \$90.725, this construction must be completed by July 29, 1997.^{3/}

2. Metricom is a young, rapidly growing, technologically innovative company based in Silicon Valley. Metricom has been a pioneer in the development of state-of-the-art data communications systems, and it has invested significant sums of money, time and energy to successfully develop, manufacture and market its sophisticated, cost-effective systems. Metricom was an active participant in this rule making proceeding filing Comments and Reply Comments encouraging the Commission to allow maximum

^{2/}Id. at ¶ 3.

^{3/}If and when Metricom exercises its option, all of the installed equipment will have to be replaced as it is only capable of providing two-way voice service.

flexibility, and minimal regulation, so that technological advances would be encouraged in the nascent 220 MHz band.

3. Metricom is interested in employing 220 MHz frequencies to provide non-voice, innovative, leading edge technology services to the public, in accordance with the Commission's stated purpose for this proceeding. Unfortunately, no 220 MHz equipment is available which can provide the types of services both the Commission and Metricom envision. Metricom believes that the development of such equipment will involve a significant investment of time and money, and the development and deployment of equipment cannot be completed for at least two years. Contrary to the stated purpose of this proceeding, by failing to make the construction benchmarks for Phase I Licensees like that of Phase II Licensees, the Commission makes no allowance, whatsoever, for the implementation of competitive and innovative services by Phase I Licensees.

**II. THE COMMISSION MUST ALLOW REGULATORY FLEXIBILITY
FOR INCUMBENT 220 MHz LICENSEES.**

4. While providing for and encouraging the development of new and innovative services in the Order, the Commission unfortunately concluded that Phase I Licensees will continue to have to meet the construction benchmarks contained in § 90.725 of the Commission's rules. Therefore, Phase I Licensees continue to face two, four, six and 10 year construction deadlines which run from the issuance of their license,^{4/} despite the fact that the

^{4/} 47 C.F.R. § 90.725(a) (1996).

Commission is now authorizing new services in the band, facilities and equipment for which have not been developed. In contrast, however, Phase II Licensees are given five years from license issuance before the first construction deadline must be met.^{5/}

5. At present, no equipment is available that is capable of providing the type of competitive, leading-edge services which the Order envisions. It is both unreasonable and unnecessary to require Phase I Licensees to adhere to the rigid construction deadlines contained in § 90.725(a), especially when Phase II Licensees, with whom the Phase I Licensees will be competing, will have a more liberal build out requirement. This unnecessary regulatory burden on Phase I Licensees begs the Constitutional Equal Protection question and only serves to force Phase I Licensees to expend funds needlessly to build out systems with equipment which may have to be discarded and replaced in the near term when new equipment, providing additional capabilities, becomes available. The only reason for some Phase I Licensees to buy equipment that is useless to them is to comply with the Commission's unreasonable and inequitable construction benchmarks.

6. The action Metricom requests in this Petition has precedent. The Commission was recently confronted with a similar situation where licensees who were facing a construction benchmark did not have equipment available for the type of service they wanted to provide. In the Interactive Video and Data Service

^{5/} Order at ¶ 158.

("IVDS") proceeding,^{6/} the Commission granted IVDS licensees' request to eliminate the one-year build out requirement imposed by the Commission's rules. In eliminating this construction benchmark, the Commission noted, "eliminating the one-year construction requirement will provide licensees with greater flexibility in selecting service options, obtaining financing, selecting equipment, and other considerations related to construction of their systems. Such action will, in turn, promote the development of the IVDS industry."^{7/} There is no reason why Phase I Licensees in the 220 MHz band should be considered any differently.

7. Given that the circumstances facing IVDS licensees are virtually the same as those now facing Phase I Licensees, it is difficult, if not impossible, to justify why IVDS licensees are entitled to an extension of a construction deadline and Phase I Licensees are not. In the 220 MHz Order, the Commission specifically expressed its desire "to eliminate unnecessary regulatory burdens." There is no discernable reason for arbitrarily requiring Phase I Licensees to adhere to construction benchmarks which: (1) were designed several years ago when the Commission had a far different vision of the services which could be offered at 220 MHz; and, (2) would necessitate the installation of equipment which must be discarded and replaced as soon as

^{6/} Amendment of Part 95 of the Commission's Rules to Modify Construction Requirements for Interactive Video and Data Service (IVDS) Licenses, 1 Comm. Reg. 1224 (1996).

^{7/} Id. at 1226.

innovative equipment, capable of providing the services envisioned by the FCC in the Order, is available.

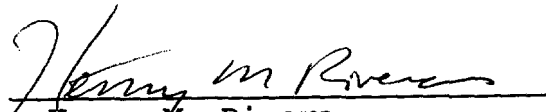
III. CONCLUSION

For all of the foregoing reasons, Metricom hereby requests reconsideration of the Order for the purpose of eliminating the construction benchmarks imposed on Phase I Licensees by Section 90.725(a) of the Commission's Rules, and providing for a reasonable build out schedule similar to that specified for Phase II Licensees.

Respectfully submitted,

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